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10 Attorneys for Plaintiff  
11 MICHAEL R. DANZI

12 UNITED STATES DISTRICT COURT  
13  
14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION  
15

16 MICHAEL R. DANZI, an individual, )  
17 Plaintiff, )

18 vs. )

19 HIGHLAND CAPITAL )  
20 MANAGEMENT, L.P., a Delaware )  
21 limited partnership; HIGHLAND )  
22 CRUSADER PARTNERS, L.P., a )  
23 Bermuda limited partnership; )  
24 HIGHLAND CREDIT STRATEGIES )  
MASTER FUND, L.P., a Bermuda )  
limited partnership; NEXBANK, SSB, )  
a Texas chartered savings bank, )

25 Defendants. )

26  
27 NEXBANK, SSB, a Texas chartered  
savings bank, )

28 Counterclaimant, )

CASE NO. SA CV 09-0039 CJC  
(RNBx)

**ANSWER TO COUNTERCLAIM  
FILED BY NEXBANK, SSB**

DEMAND FOR JURY TRIAL

Judge: Honorable Cormac J. Carney

1 v.  
2 MICHAEL R. DANZI, an individual,  
3 Counterdefendant.

4  
5 HIGHLAND CRUSADER  
6 OFFSHORE PARTNERS, L.P., a  
7 Bermuda limited partnership;  
8 HIGHLAND CREDIT STRATEGIES  
9 MASTER FUND, L.P., a Bermuda  
10 limited partnership,  
11 Counterclaimants,

12 v.  
13 MICHAEL R. DANZI, an individual,  
14 Counterdefendant.

15 Plaintiff and Counterdefendant Michael R. Danzi ("Plaintiff") for his  
16 answer to the Counterclaim filed by Defendant and Counterclaimant NexBank,  
17 SSB ("NexBank"), admits, denies and alleges as follows:

18 **ANSWER**

19 **I. THE PARTIES, JURISDICTION, AND VENUE**

20 1. Plaintiff is without knowledge or information sufficient to  
21 form a belief as to the allegations in paragraph 1 and, therefore, denies the  
22 allegations.

23 2. Plaintiff admits that he is an individual residing in the County  
24 of Orange, State of California.

25 3. Admit.

26 **II. GENERAL ALLEGATIONS**

27 4. Admit.

28 5. Admit.

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1           6.     Plaintiff admits that he executed the document attached as  
2 Exhibit "2." Plaintiff is without knowledge or information sufficient to form a  
3 belief as to the truth of the remaining allegations contained in paragraph 6 of the  
4 Counterclaim and on that basis denies the remaining allegations contained  
5 therein.

6           7.     Plaintiff admits that NexBank sent a letter dated January 8,  
7 2009. Plaintiff denies that any "Events of Default" (as defined in the Credit  
8 Agreement) have occurred. Plaintiff is without knowledge or information  
9 sufficient to form a belief as to the truth of the remaining allegations contained in  
10 paragraph 7 of the Counterclaim and on that basis denies the remaining  
11 allegations contained therein.

12           8.     Plaintiff admits NexBank filed a lawsuit in Texas. Plaintiff  
13 denies that any "Events of Default" (as defined in the Credit Agreement) have  
14 occurred. Plaintiff is without knowledge or information sufficient to form a  
15 belief as to the truth of the remaining allegations contained in paragraph 8 of the  
16 Counterclaim and on that basis denies the remaining allegations contained  
17 therein.

18           9.     Plaintiff admits that NexBank sent a letter dated February 20,  
19 2009, and that NexBank filed the Texas lawsuit. Plaintiff denies that any  
20 "Events of Default" (as defined in the Credit Agreement) have occurred.  
21 Plaintiff is without knowledge or information sufficient to form a belief as to the  
22 truth of the remaining allegations contained in paragraph 9 of the Counterclaim  
23 and on that basis denies the remaining allegations contained therein.

24           10.    Plaintiff admits that Defendants in the Texas lawsuit filed a  
25 Plea in Abatement. Except as expressly admitted above, Plaintiff denies  
26 generally and specifically the allegations contained in paragraph 10 of the  
27 Counterclaim.

28           11.    Admit.

12. Plaintiff admits that the Court determined that it had jurisdiction over this matter and that Exhibit "7" is a copy of the Court's Order denying his Emergency Application for a Temporary Restraining Order. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 of the Counterclaim and on that basis denies the remaining allegations contained therein.

## CAUSE OF ACTION

**(All Writs Act, 28 U.S.C. § 1651)**

13. Plaintiff incorporates by reference his responses as set forth in paragraphs 1 through 12 above, as though set forth herein in full.

14. Plaintiff admits that the Court has determined that it has jurisdiction over this matter and denied his Emergency Application for a Temporary Restraining Order. Plaintiff denies that he seeks to interfere with, and frustrate, the exercise of jurisdiction of this Court and further denies that he sought identical relief denied by this Court in the Texas Lawsuit. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of the Counterclaim and on that basis denies the remaining allegations contained therein.

15. Denied.

16. Plaintiff admits that the Court has determined that it has jurisdiction over this matter and denied his Emergency Application for a Temporary Restraining Order. Except as expressly admitted above, Plaintiff denies generally and specifically the allegations contained in paragraph 16 of the Counterclaim.

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**FOR HIS AFFIRMATIVE DEFENSES, THIS  
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

17. NexBank's Counterclaim fails to allege facts sufficient to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

18. NexBank's Counterclaim is barred, in whole or in part, by the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE**

19. NexBank's Counterclaim is barred, in whole or in part, by the doctrine of estoppel.

**FORTH AFFIRMATIVE DEFENSE**

20. NexBank's Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

21. NexBank's Counterclaim is barred, in whole or in part, by virtue of the fact that NexBank has not been, and will not be, harmed by the conduct alleged in the Counterclaim.

**SIXTH AFFIRMATIVE DEFENSE**

22. NexBank's Counterclaim is barred, in whole or in part, by virtue of the fact that the claim asserted therein is moot in that NexBank has already performed the act (i.e., sale of Plaintiff's interest in Legacy Pharmaceuticals International, LLC) that Plaintiff allegedly sought to enjoin.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- A. That NexBank take nothing by its Counterclaim;
- B. That Plaintiff be awarded his costs of suit;

1 C. That Plaintiff have such other, further and different relief as  
2 this Court deems just and proper.

3  
4 DATED: March 26, 2009

RUS, MILIBAND & SMITH  
A Professional Corporation

5  
6 By:  

7 RONALD RUS  
8 Attorneys for Plaintiff  
9 MICHAEL R. DANZI  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA)  
COUNTY OF ORANGE } ss.

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On **March 26, 2009**, I served the foregoing document(s) described as **ANSWER TO COUNTERCLAIM FILED BY NEXBANK, SSB** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

— (By Mail) As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

— (By Overnight Mail) As follows: I caused the above-referenced document(s) to be delivered to the above-named persons by overnight delivery service, morning delivery.

— (By Personal Service) As follows: By hand to the office of the addressee noted on the attached service list.

— (By Electronic Transmission (E-Mail)) I e-mailed the above-referenced document(s) as indicated in the parties listed above.

✓ (By CM/ECF) to registered ECF Users pursuant to General Order 07-08.

Executed on **March 26, 2009**, at Irvine, California.

— (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

✓ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

  
JEANNIE MENDEZ

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